

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K., and
T.D.,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH"; LDS
SOCIAL SERVICES a/d/a LDS FAMILY
SERVICES, a Utah corporation,

Defendants.

NO. 04-2338 RSM

DECLARATION OF MICHAEL
ROSENBERGER IN SUPPORT OF
DEFENDANT'S IN LIMINE
MOTION TO EXCLUDE
EVIDENCE OF: (1) LOHOLT'S
OTHER ACTS OF ABUSE; (2)
DAMAGES SUFFERED BY
OTHER VICTIMS; AND (3)
DEFENDANTS' SETTLEMENTS
WITH OTHERS

Michael Rosenberger, being duly sworn on oath, deposes and says:

1. I am one of the attorneys representing Defendants in this matter. I make this

Declaration based upon personal knowledge.

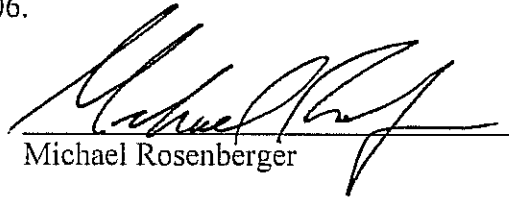
2. Attached to this Declaration are true and accurate copies of excerpts from the
depositions of Jack Onefrey (aka Loholt), Randall Borland, and Richard Pettit.

DECLARATION OF MICHAEL ROSENBERGER- 1
No. 04-2338 RSM

GORDON MURRAY TILDEN LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
Phone (206) 467-6477
Fax (206) 467-6292

1 I declare under the laws of the State of Washington and of the United States that the
2
3 foregoing is true and correct.
4

5 Signed this 18th day of August, 2006.
6

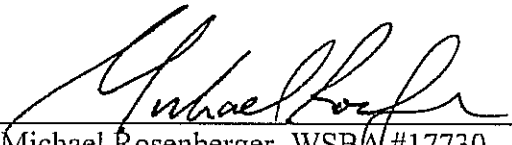
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9 Michael Rosenberger
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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following. The parties will additionally be served in the manner indicated.

Michael T. Pfau Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP P.O. Box 1157 Tacoma, WA 98401-1157 Telephone: (206) 676-7500 Facsimile: (206) 676-7575 E-Mail: mpfau@gth-law.com	Timothy D. Kosnoff Law Offices of Timothy D. Kosnoff, P.C. 600 University Street, Suite 2101 Seattle, WA 98101 Telephone: (206) 676-7610 Facsimile: (425) 837-9692 E-Mail: timkosnoff@comcast.net
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,)
)
Plaintiffs,)
)
vs.) No. C04-2338RSM
)
THE CORPORATION OF THE)
PRESIDENT OF THE CHURCH OF)
JESUS CHRIST OF LATTER-DAY)
SAINTS, a Utah corporation)
sole, a/k/a the "MORMON)
CHURCH," LDS SOCIAL SERVICES,)
a/k/a LDS FAMILY SERVICES,)
a Utah corporation,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF JACK A. ONEFREY

January 27, 2006

Seattle, Washington

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1 MR. WOLFE: Mr. -- yeah.

2 Q (By Mr. Kosnoff) Were you released as assistant
3 scoutmaster because of allegations that you had
4 sexually molested a boy?

5 MR. WOLFE: We're going to object on
6 privilege.

7 Q (By Mr. Kosnoff) After you were released as assistant
8 scoutmaster, you continued to work in the ward's scout
9 program though?

10 A No.

11 Q No? You didn't? Did you come back into the scouting
12 program at some later date?

13 A Not sure when I came back.

14 Q The records that have been provided by the church
15 indicate that you were released as assistant
16 scoutmaster of the Kent 2nd Ward in February of 1972.

17 A Could be.

18 Q So approximately one year after you had been appointed
19 assistant scoutmaster you were released?

20 A Yeah, I wasn't -- I don't know what the dates are.

21 Q And at some later point you recall coming back in and
22 working with the scouts, though, don't you?

23 A I probably supplied some transportation and things.

24 Q Supplied transportation, went on 50 mile hikes, went on
25 campouts, that kind of thing?

Jack A. Onefrey
January 27, 2006

FLEMING v. THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
 September 20, 2005 RANDALL BORLAND

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

KENNETH FLEMING and JOHN DOE, : No. C04-2338 RSM
 : (Judge Ricardo Martinez)
 :
 Plaintiffs, :
 :
 -v- :
 :
 THE CORPORATION OF THE :
 PRESIDENT OF THE CHURCH OF :
 JESUS CHRIST OF LATTER-DAY :
 SAINTS, a Utah corporation :
 sole, a/k/a "MORMON CHURCH"; :
 LDS SOCIAL SERVICES a/k/a :
 LDS FAMILY SERVICES, a Utah : Videotaped Deposition of:
 corporation, : RANDALL BORLAND
 :
 Defendants.:

September 20, 2005 - 9:08 a.m.

Location: Kirton & McConkie
 60 East South Temple, Suite 1800
 Salt Lake City, Utah

Diane W. Flanagan, RPR
 Notary Public in and for the State of Utah

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September 20, 2005

RANDALL BORLAND

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1 University in the fall of 1973 and not in 1975?

2 A Is it possible?

3 Q Yes.

4 A Instead of when?

5 Q I believe you testified earlier that you thought
6 you came to Utah in 1975 to begin your studies.

7 A That was a guess, wasn't it? That was an
8 approximate guess.

9 Q Yes.

10 A Yeah, it's possible then. It's possible, but I
11 don't know, but very possible.

12 Q Okay.

13 A That would fall in line. This is -- in that
14 regard that's helpful.

15 Q Well, as we get older, we all need these little
16 aids, don't we?

17 So during this approximate three-year time period
18 that you were bishop of the Kent Second Ward, you've
19 indicated that you did receive a complaint regarding
20 sexually inappropriate activity by Jack Loholt. Correct?

21 MR. FREY: I'm going to object to the form of the
22 question. It assumes something that he hasn't testified to.

23 Go ahead.

24 Q (By MR. KOSNOFF) Did you receive a complaint or
25 report from anybody that Jack Loholt had engaged in sexually

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1 inappropriate activity during the time that you were bishop
2 of the Kent Second Ward?

3 MR. FREY: Now, again, Bishop, I'm going to
4 caution you that if you learned any of this information in
5 your capacity as a bishop in a confidential communication
6 that you have the privilege not to answer it, in my opinion.
7 Counsel may differ with that, but I would instruct you not
8 to answer it if that's the basis upon which you gained your
9 information.

10 MR. KOSNOFF: I would like to ask a few foundation
11 questions before he answers that question in light of your
12 instruction to your client.

13 MR. FREY: Okay.

14 Q (By MR. KOSNOFF) Assuming the answer to the
15 question is yes, did you receive this communication in your
16 capacity as a clergy person for the Mormon church, that is,
17 in your role as clergy in the Mormon church?

18 MR. FREY: Object to the --

19 A That was a hypothetical. That was hypothetical --

20 MR. FREY: Excuse me. I'm going to object to the
21 form of the question.

22 You may answer, though. Go ahead. Have her read
23 it back. Please wait until -- give me a second because I
24 have the right to make objections.

25 THE WITNESS: I'm sorry.

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1 MR. FREY: Okay. Go ahead.

2 (The record was read as requested)

3 A I'm answering a question based on an assumption?

4 Q Yes. I'm not asking you for the content of the
5 communication yet. I'm asking you questions about the
6 circumstances under which the communication was made.

7 A Yes.

8 Q Was the communication made for purposes of
9 pastoral response by you?

10 A Are we still on an assumption? Are these
11 questions or -- because you said assuming that the answer
12 was yes. I've never answered that question yet, and forgive
13 me. I'm being a little dense here, but I don't know if I'm
14 still answering on an assumption. Am I saying that right
15 even?

16 Q Yes, you are.

17 A Okay.

18 Q Because the answer yes or no to the question could
19 potentially violate a privilege. But before you answer that
20 question, I'm asking you questions surrounding that
21 communication. Okay? I'm not asking you about what was
22 said or whether the answer to my -- that previous question
23 was yes or no. I'm just asking you other questions related
24 to the nature of that communication and the surrounding
25 circumstances.

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1 A Okay.

2 Q So again my question is: Was this something that
3 you learned in connection with pastoral counseling within
4 the Church?

5 A Yes.

6 Q Was the information that you received something
7 that you are required to keep confidential under the
8 doctrines and teachings of your church?

9 A Yes.

10 Q Was the communication that you received something
11 that you in fact kept confidential, that is, that you did
12 not disclose to any other person?

13 A Let me make sure I understand that. A
14 communication not disclosed to anybody else?

15 Q Correct.

16 A The answer to that question, if I've heard the
17 question correct, is yes or -- let me rephrase it, and then
18 tell you what I thought you said.

19 Q Go ahead.

20 A I did not disclose what was said confidentially to
21 me to others.

22 Q Just so that I'm clear on this, you did not
23 disclose the content of what was said to you by that person
24 to any other person?

25 A The content of that conversation, that meeting, I

1 did not.

2 Q Okay.

3 A The best of my recollection.

4 Q Okay. Did you ever make a referral to LDS Social
5 Services for counseling Jack Loholt?

6 A I don't remember. I do not remember that.

7 Q Did you do anything or say anything to anyone else
8 following the communication that you received from this
9 person?

10 A Regarding specifics?

11 Q Anything.

12 A Yes.

13 Q What did you do or say?

14 A I talked --

15 MR. FREY: Again I'm going to caution you that if
16 you took any steps in your capacity as a clergyman and
17 ecclesiastical in accordance with the teachings and beliefs
18 of the LDS religion that you are not obligated to break that
19 confidentiality if in fact you learned that in those
20 circumstances.

21 And for the record, Counsel, what I'm trying to do
22 here is allow you to ask questions without reaching what I
23 believe is a privilege that he has as a bishop to receive
24 information, treat it with confidentiality, and act on it in
25 an ecclesiastical fashion.

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1 MR. KOSNOFF: Could you identify the source of
2 that privilege.

3 MR. FREY: State v. Martin and the statute, the
4 First Amendment.

5 MR. KOSNOFF: So are you relying on the clergy
6 penitent privilege?

7 MR. FREY: And his First Amendment rights.

8 MR. KOSNOFF: What First Amendment rights are you
9 referring to?

10 MR. FREY: Free exercise rights.

11 MR. KOSNOFF: Specifically what in the free
12 exercise clause are you basing this privilege?

13 MR. FREY: That he has the right to free exercise
14 of religion to be free from the restraint of having a civil
15 court interfere and make him disclose confidential
16 communications. We've been through this. We've briefed it.
17 We've already argued it in the Court of Appeals and won it.

18 MR. KOSNOFF: No. We've --

19 MR. FREY: And that's what I'm doing here.

20 MR. KOSNOFF: No. That was a completely different
21 issue and very different narrow issue than --

22 MR. FREY: And there's a third item involved here
23 that we haven't gotten to yet, but that is the privacy
24 rights of individuals who may be involved, if any. But I'm
25 trying not to interfere with your legitimate discovery area,

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1 and so I'm trying to be very careful here. And I want you
2 to understand that it's not my purpose here to frustrate
3 your discovery, but I do want him to be careful that he
4 doesn't breach any of the confidentiality that is imposed
5 upon him by his position as a clergyman.

6 So if you can read back the question. Sorry about
7 the speech --

8 MR. KOSNOFF: Well, I -- we have gone through the
9 criteria for the appropriate assertion of the clergy
10 penitent privilege, and that shields him from disclosing the
11 content of privileged communications based upon that
12 statute. My questions now are not directed at the content
13 of that communication. My questions are directed at what he
14 did or said to others following that communication.

15 MR. FREY: But that may very well involve his
16 working in an ecclesiastical capacity and involve
17 conversations with other people that are privileged, and
18 that's my point.

19 MR. KOSNOFF: That -- it's our position that that
20 would not be privileged and that he is required to answer
21 those questions.

22 MR. FREY: Just a second.

23 (Defense counsel confer)

24 MR. FREY: I -- I've made my objection. We
25 disagree. Okay?

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1 MR. KOSNOFF: Are you directing him not to answer.

2 MR. FREY: No, I'm not. I'm asking him if he can
3 answer without violating -- if he can answer about what he
4 did without violating any confidentiality that I believe he
5 has the right to maintain as a bishop, then he may answer
6 the question.

7 A I believe I can do that. Confidentiality is very
8 important to me. I -- the only reason I even hesitate at
9 all is because of the conversation, and I'm very respectful
10 of both of you. I didn't talk about, to another person, the
11 content of my discussion with the ward member that contacted
12 me, but the circumstance surrounding it I did, and that was
13 Jack Loholt. I had to talk with him.

14 Q And that conversation that you had with Jack
15 Loholt took place fairly soon after?

16 A Yes, sir.

17 Q And what was said?

18 MR. FREY: Again, you may answer that question if
19 it will not violate any privilege that you have as a
20 clergyman.

21 A I don't believe I can answer that.

22 Q Again let's go through some of the questions that
23 I asked you before, a checklist, if you will.

24 A Okay.

25 Q Because there's -- may well be a judge that's

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1 we can, when Jack Loholt was released by you as assistant
2 scoutmaster of the Kent Second Ward. If you would turn to
3 page 5 of Exhibit 1. That is the numbered page 5.

4 A Okay.

5 Q If you go to February 6, 1972, the entry indicates
6 Jack Loholt was released as assistant scoutmaster on that
7 day?

8 A Yes, that's what it says. I don't remember the
9 dates.

10 Q Okay. But is that consistent with your general
11 recollection as to when you released Jack from the scouting
12 program?

13 A Yes.

14 Q And without disclosing the communication, was it
15 fairly quickly after you received information regarding Jack
16 Loholt?

17 A Are you asking if that's my memory?

18 Q Yes.

19 A Yes, uh-huh (affirmative).

20 Q And is it -- is it your testimony that you never
21 spoke to the scoutmaster, why you were releasing his
22 assistant scoutmaster?

23 A That's correct.

24 Q And you never told your first or second counselor
25 the reasons why you were taking that action?

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December 13, 2005

RICHARD PETTIT

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

KENNETH FLEMING and JOHN DOE,)	
)	Case No. C04-2338 RSM
Plaintiffs,)	
)	
vs.)	Videotaped Deposition
)	of:
THE CORPORATION OF THE PRESIDENT))	RICHARD PETTIT
OF THE CHURCH OF JESUS CHRIST OF))	
LATTER-DAY SAINTS, a Utah)	
corporation sole, a/d/a "MORMON)	
CHURCH"; LDS SOCIAL SERVICES,)	
a/d/a LDS FAMILY SERVICES, a)	
Utah corporation,)	
)	
Defendants.)	

December 13, 2005
 9:24 a.m.

Kirton & McConkie
 1800 Eagle Gate Tower
 60 East South Temple
 Salt Lake City, UT 84145-0120

Sharon Morgan, CSR, RPR, CRR
 Notary Public in and for the State of Utah

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1 second counselor?

2 A. Second. I'm sorry, now, I was not -- in 1971
3 I was not a counselor.

4 Q. Okay. What were the circumstances under
5 which you received this information from this boy?

6 A. It was voluntary.

7 Q. Where did he tell you this?

8 A. In my home.

9 Q. Was the boy a friend of your son?

10 A. No.

11 Q. Was it one of your sons?

12 A. Yes.

13 Q. Was it Scott?

14 A. Yes.

15 Q. When your son Scott told you this
16 information, did you believe it?

17 A. Yes.

18 Q. Did you do anything with this information?

19 A. Yes.

20 Q. What was that?

21 A. I went to Bishop Borland.

22 Q. And did you tell Bishop Borland what your son
23 Scott had told you?

24 A. Yes.

25 Q. And what did Bishop Borland say?

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1 A. He was shocked.

2 MR. FREY: At this point -- did you expect
3 your conversation -- let me interpose an objection and
4 ask a question. Do you expect your conversation with
5 Bishop Borland to be confidential?

6 THE WITNESS: Yes.

7 MR. FREY: Are you willing to waive that
8 confidentiality and testify about it today, about what
9 you spoke to about with Bishop Borland?

10 THE WITNESS: Yes.

11 MR. FREY: Okay. Go ahead, Counsel.

12 Q. (By Mr. Kosnoff) When you went to Bishop
13 Borland, you were not going to him for purposes of
14 confessing your sin, were you?

15 A. No.

16 Q. And you would hope that he would -- that --
17 strike that. What was your reason for going to Bishop
18 Borland?

19 A. To inform him of the situation.

20 Q. And was it your hope or intention that Bishop
21 Borland would use this information and take some kind
22 of concrete action with respect to Jack LaHolt?

23 A. Yes.

24 Q. And what was your -- what did you hope that
25 he would do?

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1 A. Correct it.

2 Q. What did Bishop Borland say to you?

3 A. I don't remember.

4 Q. Did he tell you that he would do something
5 about Jack?

6 A. I don't remember.

7 Q. Did he give you any kind of assurances that
8 the matter would be handled?

9 A. Yes.

10 Q. And did you trust that the matter would be
11 handled?

12 A. Yes.

13 Q. Was it handled?

14 A. Yes.

15 Q. To your knowledge, what happened with respect
16 to Jack LaHolt?

17 A. Within one week he was released.

18 Q. How did you become aware that he had been
19 released?

20 A. At the church service the following week.

21 Q. Did somebody communicate that to you?

22 A. Yes.

23 Q. Bishop Borland?

24 A. Yes.

25 Q. And he told you that he released Jack?

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